

Jordan L. Lurie (SBN 130013)
Jordan.Lurie@capstonelawyers.com
Tarek H. Zohdy (SBN 247775)
Tarek.Zohdy@capstonelawyers.com
Cody R. Padgett (SBN 275553)
Cody.Padgett@capstonelawyers.com
CAPSTONE LAW APC
1840 Century Park East, Suite 450
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

***Attorneys for Plaintiffs Jean MacDonald,
Veronica H. Aguirre, and Brian C. Barbee***

Amir Nassihi (SBN 235936)
SHOOK, HARDY & BACON L.L.P.
One Montgomery, Suite 2700
San Francisco, California 94104
Telephone: (415) 544-1900
anassihi@shb.com

John M. Thomas (266842)
jthomas@dykema.com
Krista L. Lenart (admitted *pro hac vice*)
klenart@dykema.com
David M. George (admitted *pro hac vice*)
dgeorge@dykema.com
DYKEMA GOSSETT PLLC
2723 South State Street, Suite 400
Ann Arbor, MI 48103
Telephone: (734) 214-7600
Facsimile: (855) 264-3653

Attorneys for Defendant FORD MOTOR COMPANY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JEAN MACDONALD, VERONICA H.
AGUIRRE, and BRIAN C. BARBEE,
individually, and on behalf of a class of similarly
situated individuals,

Plaintiffs,

vs.

FORD MOTOR COMPANY,

Defendant.

Case No. 3:13-cv-02988-JST

Honorable Judge Jon S. Tigar

CLASS ACTION

DISCOVERY MATTER

**STIPULATION FOR PROTECTIVE
ORDER; AND [PROPOSED]
PROTECTIVE ORDER)**

1 Discovery in this action is likely to involve production of material that the
2 producing party contends is confidential, proprietary, or private information for
3 which special protection from public disclosure and from use for any purpose other
4 than prosecuting this litigation would be warranted, including but not limited to (1)
5 engineering documents, including design drawings and specifications, (2) test
6 documents and testing procedures; (3) manufacturing specifications and
7 procedures; (4) internal business or financial information; (5) confidential customer
8 information; and (6) any other similar proprietary, confidential, or private
9 information, including but not limited to trade secrets. A protective order is
10 necessary for information in categories (1), (2), (3) and (4) because the producing
11 party operates in a highly competitive, global marketplace and is dependent upon
12 its technical and business know-how to achieve and maintain a competitive
13 advantage. Disclosure of this information could result in serious and immediate
14 competitive and economic harm. Information in categories (5) and (6) may include
15 such things as personally identifying information, trade secrets not falling within
16 one of the other categories, and competitive intelligence, and must be protected for
17 personal privacy or competitive protection reasons. Because information produced
18 in this case may be shared with consulting and testifying experts, a private
19 agreement between the parties would not suffice, and a court order is required.

20 Therefore, to expedite the flow of discovery material, facilitate the prompt
21 resolution of disputes over confidentiality, adequately protect material entitled to
22 be kept confidential, and ensure that protection is afforded only to material so
23 entitled, the parties stipulate and agree to the following form of protective order:

24 1. **Scope of Order.** This Order is intended to facilitate the Parties'
25 production of information and documents as part of voluntary disclosure and in
26 response to discovery requests. Nothing in this Order is to be construed to expand or
27 limit the Parties' discovery obligations or to preclude any Party from objecting to the
28 production of any information that would be protected under this Order for any

1 reason allowed under the Federal Rule of Civil Procedure or other applicable law.
2 This Order covers the production and use of all Protected Documents in this action
3 that constitute, contain or disclose, in whole or in part, information which the
4 Designating Party designates as “Confidential.” This Order is also intended to apply
5 to any documents produced to the Parties by a non-party in connection with a
6 subpoena.

7 2. **General Definitions.** For purposes of this Order, the following terms
8 have the following meanings:

9 a. Pursuant to FRCP 26(c)(1)(G) and Cal. Civil Code §§ 3426, *et seq.*,
10 “Confidential Information” shall mean trade secrets or other confidential research,
11 development, or commercially sensitive business information, the disclosure of which
12 would cause competitive harm, that is contained in Protected Documents, and which
13 have not been or made available to the public.
14

15 b. “Customer” shall mean any person or entity that purchases or otherwise
16 comes to possess Defendant’s product.

17 c. “Designating Party” shall mean the Party or non-party designating
18 Discovery Material as “Confidential.”

19 d. “Discovery Materials” shall mean and include, without limitation,
20 Documents, including Electronically Stored Information (ESI), responses to
21 interrogatories, requests for admissions, or other discovery requests, physical objects,
22 samples, CD-ROMs, tapes or other items, deposition transcripts and exhibits thereto,
23 and information provided by or on behalf of the Parties or any non- party witness
24 pursuant to subpoena or otherwise in the course of discovery.
25

26 e. “Document” shall mean and include, without limitation, all written
27 material, videotapes and all other tangible items, produced in whatever format (e.g.,
28 hard copy, electronic, digital, etc.) and on whatever media (e.g., hard copy, videotape,

1 computer diskette, CD-ROM, DVD, hard drive or otherwise) defined as broadly as
2 permitted under FRCP 34.

3 f. "Party" or "Parties" shall mean and include the parties to this litigation.

4 g. "Pleadings" shall mean and include, without limitation, all papers,
5 motions, briefs, affidavits, declarations, exhibits, etc., filed with the Court.
6

7 h. "Protected Documents" shall mean documents to be produced in this
8 litigation which contain Confidential Information.

9 **3. Designating Confidential Information.**

10 a. All designations of Confidential Information shall be made in good faith
11 by the Designating Party and made at the time of disclosure, production, or tender.
12

13 b. The designation of Confidential Information may be made by marking or
14 placing the applicable notice "Subject to Protective Order," "Confidential," or
15 substantially similar notice, on the document, or, where a copy of the original
16 document is to be produced, on that copy.

17 c. Any document or any information designated as "Subject to Protective
18 Order," "Confidential," or similar language in accordance with the provisions of this
19 Order shall only be used, shown or disclosed as provided in this Order.

20 d. The burden of proving that a Protected Document contains Confidential
21 Information is on the Designating Party. Prior to designating any material as
22 "Confidential," the Designating Party must make a bona fide determination that the
23 material is, in fact, a trade secret or other confidential research, development, or
24 commercial information pursuant to FRCP 26(c)(1)(G).

25 e. If a Party disagrees with the "Confidential" designation of any Protected
26 Document, the party will so notify the Designating Party in writing. Counsel shall
27 confer in good faith in an effort to resolve any dispute concerning such designation or
28 redaction. The Parties shall follow the procedures set forth in Northern District of

1 California Local Rule 37 governing discovery disputes to resolve whether the
2 Confidential Information should be treated as “Confidential.” If the objection cannot
3 be resolved by agreement, the Designating Party shall file and serve a motion to
4 retain confidentiality or request a conference with the Court pursuant to Local Rule
5 37-1(b). The document or information whose “Confidential” designation or redaction
6 is objected to shall continue to be treated as “Confidential,” as applicable, until the
7 issue has been decided by the Court.

8 **4. Use and Disclosure of Protected Documents.**

9
10 a. Protected Documents and any copies thereof received pursuant to this
11 Protective Order shall be maintained Confidential by the receiving party, his/her
12 attorney, other representatives, and expert witnesses, and shall be used only for
13 purposes of this action, subject to the limitations set forth herein. The persons or
14 entities identified in Paragraph 4(b)(i)-(ix) below to whom Protected Documents are
15 disclosed pursuant to this Order shall keep all such materials and information, and
16 any copies, notes, extracts, summaries, or descriptions of such material, within their
17 exclusive possession and control, shall treat all such copies, notes, extracts,
18 summaries, or descriptions of the Protected Documents or any portion thereof as
19 Confidential, shall take all necessary and prudent measures to maintain the
20 confidentiality of all such materials or information, and shall not disseminate such
21 Protected Documents other than in accordance with this Order.

22 b. Protected Documents shall be disclosed only to “Qualified Persons.”
23 Qualified Persons are limited to:

- 24 i. The Court and its personnel;
25 ii. The Parties to this litigation;
26
27 iii. Counsel of record in this litigation, as well as paralegals,
28 technical, administrative and clerical employees working under
the direct supervision of such counsel;

- 1 iv. Experts and non-attorney consultants retained by the Parties for
2 the preparation or trial of this case, provided that no disclosure
3 shall be made to any expert or consultant who is currently
4 employed by an automobile manufacturer competitor of Ford
 (unless both Parties consent to the disclosure);
- 5 v. A potential, anticipated or actual fact witness whom counsel for
6 the disclosing Party believes in good faith is likely to have
7 knowledge pertaining to the content of the Protected Documents
 to be disclosed;
- 8 vi. The author(s) or any recipient of the document;
- 9 vii. Litigation support consultants and vendors who provide litigation
10 support services (e.g., photocopying, electronic discovery,
11 videotaping, translating, preparing exhibits or demonstrations,
 etc.);
- 12 viii. Court reporters recording and/or transcribing deposition
13 testimony; and
- 14 ix. Any person expressly named and agreed to in writing by the
15 Parties or by further Order of the Court.

16 c. While the Parties may provide Protected Documents in accordance with
17 the provisions of this Protective Order in an electronic form, such documents may not
18 be posted on any website or internet accessible document repository that is accessible
19 to anyone other than “Qualified Persons” listed above.

20 d. All persons described in Paragraph 4(b)(i)-(xi) above shall not under any
21 circumstance sell, offer for sale, advertise, or publicize either the Protected
22 Documents and the Confidential information contained therein or the fact that such
23 persons have obtained Protected Documents and Confidential Information.

24 e. All persons described in Paragraphs 4(b)(iv), (v), (vii) and (ix) above
25 shall not have access to Protected Documents without having first read,
26 acknowledged, and agreed to be bound by this Order by executing the Agreement to
27 be Bound attached as Exhibit A (the “Agreement to be Bound”).
28

1 5. Each Party's counsel shall retain each such executed Agreement to be
2 Bound and shall keep a list identifying (a) all persons referenced in Paragraphs
3 4(b)(iv), (v), (vii) and (ix) above to whom Protected Documents have been disclosed,
4 and (b) all Protected Documents disclosed to such persons. Each executed
5 Agreement to be Bound shall not be made available to the Designating Party during
6 the pendency of the litigation but shall be available for an *in camera* inspection by the
7 Court if good cause for review is demonstrated by the Designating Party. During the
8 pendency of the litigation or after the termination of the litigation, subject to the
9 attorney work-product doctrine/attorney-client privilege and for good cause shown,
10 the Court may order any party to provide to the Designated Party the list referenced
11 above and any executed Agreement to be Bound.

12 **6. Designation of Deposition Testimony.**

13 a. Deposition testimony that counsel for the Party or non-party witness
14 tendering such testimony, in good faith, believes refers to Protected Documents or
15 information obtained therefrom shall be designated as "CONFIDENTIAL," as
16 applicable, by such counsel by making a statement on the record for inclusion in the
17 deposition transcript or, in writing, within thirty (30) calendar days after receipt of the
18 transcript.
19

20 b. When Protected Documents or information obtained therefrom is
21 designated as confidential in a deposition transcript, the counsel making the
22 designation shall instruct the reporter to imprint the legend "THIS TRANSCRIPT
23 CONTAINS CONFIDENTIAL INFORMATION" on the cover page of the transcript
24 and to include, at the front of the transcript, a page identifying all pages and lines
25 designated "CONFIDENTIAL" in the transcript.

26 c. To the extent that Protected Documents or information obtained
27 therefrom are used in the taking of depositions and/or used as exhibits at trial, such
28 documents or information shall remain subject to the provisions of this Order, along

1 with the transcript pages of the deposition testimony and/or trial testimony dealing
2 with the Protected Documents or information.

3 d. Any court reporter or transcriber who reports or transcribes testimony in
4 this action shall agree that all Confidential Information designated as such under this
5 Order shall remain Confidential and shall not be disclosed by them, except pursuant
6 to the terms of this Order, and that any notes or transcriptions of such testimony (and
7 any accompanying exhibits) will be retained by the reporter or delivered to counsel of
8 record.

9
10 7. **Filing Under Seal.** Without written permission from the Designating
11 Party or a court order secured after appropriate notice to all interested persons, a
12 Party may not file in the public record in this action any Protected Documents. A
13 Party that seeks to file under seal any Protected Documents must comply with Civil
14 Local Rule 79-5. Protected Documents may only be filed under seal pursuant to a
15 court order authorizing the sealing of the specific Protected Documents at issue.
16 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
17 establishing that the Protected Documents at issue is privileged, protectable as a trade
18 secret, or otherwise entitled to protection under the law. If a Receiving Party's request
19 to file Protected Documents under seal pursuant to Civil Local Rule 79-5(d) is denied
20 by the court, then the Receiving Party may file the information in the public record
21 pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court. Until
22 such time as the Court issues an order sealing the Protected Documents, the party
23 seeking to use the Protected Documents may refer only to a redacted version. Upon
24 granting of an order sealing the record, the Protected Documents will be sealed and
25 labeled by the court clerk according to Local Rule 79-5.

26 8. **Return and Destruction of Protected Documents.** Within ninety (90)
27 days after the conclusion of this case, counsel for the Party who has received
28 Protected Documents shall either: (a) return to the Designating Party the Protected

1 Documents, including any documents which any such Party disclosed to any
2 Qualified Person, or (b) securely destroy the Protected Documents, including any
3 documents which any such Party disclosed to any Qualified Person, and certify in
4 writing such destruction to the Designating Party.

5 **9. Inadvertent Production.**

6
7 a. Inadvertent or unintentional production of documents or information
8 containing information which should have been designated as Confidential shall not
9 be deemed a waiver in whole or in part of the Party's claims of confidentiality. If a
10 Party has inadvertently or unintentionally produced information which should have
11 been designated as Confidential, the producing Party will notify the receiving Party
12 within twenty-one (21) days of discovery of the inadvertent production and request
13 that the Confidential designation be applied to such documents or information. If a
14 receiving party objects to the producing Party's Confidentiality designation, it will
15 notify the producing Party of its objections in writing within seven (7) business days
16 of receipt of the notification described above. Within fourteen (14) business days, the
17 producing Party may then move the Court for an order compelling the protection of
18 such information. Pending the Court's ruling, a receiving Party agrees to maintain the
19 documents as Confidential under the terms of this Order.

20 b. Inadvertent or unintentional production of documents or information
21 containing information which should have been designated as privileged shall not be
22 deemed a waiver in whole or in part of the Party's claims of privilege. Pursuant to
23 Fed. R. Evid. 502(b)-(d), if a Party has inadvertently or unintentionally produced
24 information subject to a claim of immunity or privilege, upon written request made
25 by the producing Party within twenty-one (21) days of discovery, all copies of such
26 information shall be returned to the producing Party within seven (7) business days of
27 such request unless the receiving party intends to challenge the producing Party's
28 assertion of privilege or immunity. If a receiving party objects to the return of such

1 information within the seven (7) business day period described above, the producing
2 Party may move the Court for an order compelling the return of such information.
3 Pending the Court's ruling, a receiving Party may sequester the inadvertently or
4 unintentionally produced documents in a sealed envelope and shall not make any use
5 of such information.

6 10. **Not Applicable to Trial.** This Order does not apply to the offer of or
7 admission into evidence of Protected Documents or Confidential Information or their
8 content at trial or in any evidentiary hearing, nor does it apply for any other purpose
9 under the Federal Rules of Evidence. Such evidentiary issues should be raised as a
10 separate matter upon the motion of any party at the time of trial or evidentiary
11 hearing.

12 11. **Right to Use Own Information.** Nothing in this Order shall limit any
13 Party's right to disclose to any person, or use for any purpose, its own information
14 and documents.

15 12. **Subpoena or Order.** If a Party is served with a subpoena or an order
16 issued in other litigation that would compel disclosure of any information or items
17 designated in this action as Confidential, counsel for the receiving Party must
18 promptly notify counsel for the Designating Party in writing, and in no event, more
19 than five (5) business days after receiving the subpoena or order. Counsel for the
20 receiving Party also must inform, in writing, the Party who caused the subpoena or
21 order to issue in the other litigation that some or all the material covered by the
22 subpoena or order is the subject of this Order.

23 13. **Non-Party Discovery.** Any documents or information produced by a
24 non-party witness in discovery in the action pursuant to subpoena or otherwise may
25 be designated by such non-party as "Confidential" under the terms of this Order, and
26 such designation shall have the same force and effect, and create the same duties,
27 obligations, and remedies as if made by one of the parties hereto.
28

1 14. **Modification.** This Protective Order may not be waived, modified,
2 abandoned or terminated, in whole or part, except by an instrument in writing signed
3 by the Parties or pursuant to further Court Order. If any provision of this Protective
4 Order shall be held invalid for any reason whatsoever, the remaining provisions shall
5 not be affected thereby.

6 15. **Duration.** After termination of this litigation, the provisions of this
7 Order shall continue to be binding. This Court retains and shall have jurisdiction
8 over the parties and recipients of the Protected Documents for enforcement of the
9 provisions of this Order following termination of this litigation
10

11 This Protective Order shall be binding upon the parties hereto, upon their
12 attorneys, and upon the Parties' and their attorneys' successors, executors, personal
13 representatives, administrators, heirs, legal representatives, assigns, subsidiaries,
14 divisions, employees, agents, independent contractors, or other persons or
15 organizations over which they have control.

16 IT IS SO ORDERED.

17 Dated: _____, 2014

By: _____
Judge Jon. S Tigar
United States District Judge

19 Approved as to form and content and respectfully submitted by:

21 Dated: February 23, 2015

DYKEMA GOSSETT PLLC

22 By: Amir Nassihi
23 Amir Nassihi (SBN 235936)
24 Attorneys for Defendant Ford Motor
25 Company

CAPSTONE LAW APC

26 By: Tarek H. Zohdy
27 Tarek H. Zohdy (SBN 247775)
28 Attorneys for Plaintiffs

Jordan L. Lurie (SBN 130013)
Jordan.Lurie@capstonelawyers.com
Tarek H. Zohdy (SBN 247775)
Tarek.Zohdy@capstonelawyers.com
Cody R. Padgett (SBN 275553)
Cody.Padgett@capstonelawyers.com
CAPSTONE LAW APC
1840 Century Park East, Suite 450
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

***Attorneys for Plaintiffs Jean MacDonald,
Veronica H. Aguirre, and Brian C. Barbee***

Amir Nassihi (SBN 235936)
SHOOK, HARDY & BACON L.L.P.
One Montgomery, Suite 2700
San Francisco, California 94104
Telephone: (415) 544-1900
anassihi@shb.com

John M. Thomas (266842)
jthomas@dykema.com
Krista L. Lenart (admitted *pro hac vice*)
klenart@dykema.com
David M. George (admitted *pro hac vice*)
dgeorge@dykema.com
DYKEMA GOSSETT PLLC
2723 South State Street, Suite 400
Ann Arbor, MI 48103
Telephone: (734) 214-7600
Facsimile: (855) 264-3653

Attorneys for Defendant FORD MOTOR COMPANY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JEAN MACDONALD, VERONICA H.
AGUIRRE, and BRIAN C. BARBEE,
individually, and on behalf of a class of similarly
situated individuals,

Plaintiffs,

vs.

FORD MOTOR COMPANY,

Defendant.

Case No. 3:13-cv-02988-JST

Honorable Judge Jon S. Tigar

CLASS ACTION

DISCOVERY MATTER

**AGREEMENT TO BE BOUND (EXHIBIT A
TO PROTECTIVE ORDER)**

1 I, _____ [print or type full name], of
2 _____[print or type full address],
3 declare under penalty of perjury that I have read in its entirety and understand the Protective
4 Order that was issued by the United States District Court for the Northern District of California
5 on _____ [date] in the above-captioned case.

6 I agree to comply with and to be bound by all the terms of this Protective Order, and I
7 understand and acknowledge that failure to so comply could expose me to sanctions and
8 punishment in the nature of contempt I solemnly promise that I will not disclose in any manner
9 any information or item that is subject to this Protective Order to any person or entity except in
10 strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of
11 the United States District Court for the Northern District of California for the purpose of
12 enforcing the terms of this Protective Order, even if such enforcement proceedings occur after
13 termination of this action.

14 Date: _____

15 City and State where signed: _____

16 Signature: _____

17 Printed Name: _____

18 [Address] _____

19 [Telephone Number] _____

20 AA01\407319.2

21 ID\DMGE - 087770\0140